

FILED
COURT OF APPEALS
DIVISION II

2013 SEP 17 PM 1:37

STATE OF WASHINGTON

BY  DEPUTY

NO. 44727-4-II

IN THE COURT OF APPEALS
OF
THE STATE OF WASHINGTON
DIVISION II

DEBBIE A. CRONN,

Appellant.

v.

DEPARTMENT OF LABOR AND INDUSTRIES
OF THE STATE OF WASHINGTON, AND
NORTHWEST STEEL AND PIPE, INC.,

Respondents.

APPELLANT'S REPLY TO BRIEF OF RESPONDENT

LAW OFFICES OF MARK C. WAGNER

Mark C. Wagner, WSBA No. 14766

6512 20th St. Ct. W., Suite A

P. O. Box 65170

Tacoma, WA 98466-6212

(253) 460-3265

Attorney for Appellant

**LAW OFFICES OF
MARK C. WAGNER**

6512 20th St. Ct. West, Suite A

P. O. Box 65170

Tacoma, WA 98464-1170

Tacoma (253)460-3265

Toll Free 888-279-2002

E-Mail: mark@markcwagner.com

FAX (253) 460-6842

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LAW OFFICES OF
MARK C. WAGNER
6512 20th St. Ct. West, Suite A
P. O. Box 65170
Tacoma, WA 98464-1170
Tacoma (253)460-3265
Toll Free 888-279-2002
E-Mail: mark@markcwagner.com
FAX (253) 460-6842

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I. REPLY

The Department and subsequent triers of fact seem to think the Appellant is arguing that res judicata or collateral estoppel do not apply in workers' compensation cases. That is not the case: they clearly do.

The point is that the 2005 order segregating the Appellant's arthritis was absolutely correct. Debbie Cronn did have an unrelated, pre-existing arthritic condition. There was no reason to appeal the order that correctly found she had unrelated arthritis. Why should workers need to appeal orders that are correct?

However, the order made no mention of *aggravation*. There was no proof at the time of aggravation. That order is final and binding: she did have an arthritic condition. But that order made no mention of *aggravation*. That issue is not res judicata, because it was not mentioned. The Appellant's current condition is an arthritic condition *aggravated by the industrial injury* and requiring treatment. Previously briefed, and well known to the court, a pre-existing condition *aggravated by an industrial injury* shall be allowed and treated under the industrial insurance act.

**LAW OFFICES OF
MARK C. WAGNER**
6512 20th St. Ct. West, Suite A
P. O. Box 65170
Tacoma, WA 98464-1170
Tacoma (253)460-3265
Toll Free 888-279-2002
E-Mail: mark@markcwagner.com
FAX (253) 460-6842

1 Ms. Cronn's 2002 industrial injury claim did not incorporate
2 aggravation of her pre-existing arthritis. No medical finding of
3 *aggravation* was made until February 22, 2007, a date that arrived more
4 than 23 months after the Department's decision. The Department asks that
5 the Court interpret its March 30, 2005 order to segregate a condition *that*
6 *had not yet been diagnosed*. If the Court accepts the Department's
7 interpretation of its order, the Court is in effect giving approval to the
8 unprecedented concept of *preemptive segregation* of conditions.
9

10 The public harm that could be caused by giving the Department
11 power to preemptively segregate a condition that does not yet exist could
12 be immense. The Department's interpretation of its order and of the law is
13 against public policy.

14 Regarding whether the industrial injury is the proximate cause of
15 Ms. Cronn's need for treatment, the proximate cause principles as long set
16 forth by the Washington courts support the Appellant's arguments that the
17 industrial injury – a cause of aggravation of the pre-existing arthritis - is a
18 proximate cause for her current need for treatment. The injury need only
19 be one cause among several causes in order for acceptable causation to
20 exist.
21

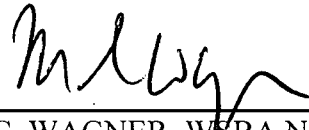
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**LAW OFFICES OF
MARK C. WAGNER**
6512 20th St. Ct. West, Suite A
P. O. Box 65170
Tacoma, WA 98464-1170
Tacoma (253)460-3265
Toll Free 888-279-2002
E-Mail: mark@markcwagner.com
FAX (253) 460-6842

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2 ///

3 RESPECTFULLY SUBMITTED this 1³th day of September,
4 2013.

5 LAW OFFICES OF MARK C. WAGNER

6 

7 MARK C. WAGNER, WSBA No. 14766
8 Attorney for Appellant
9 P O Box 65170 / 6512 20th St. Ct. W., Ste. A
10 Tacoma, WA 98464
11 253-460-3265 / Fax 253-460-6842

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**LAW OFFICES OF
MARK C. WAGNER**

6512 20th St. Ct. West, Suite A
P. O. Box 65170
Tacoma, WA 98464-1170
Tacoma (253)460-3265
Toll Free 888-279-2002
E-Mail: mark@markcwagner.com
FAX (253) 460-6842


1
2 **CERTIFICATE OF SERVICE**

3 I certify that I served, or caused to be served, a copy of the
4 foregoing Appellant's Reply to Brief of Respondent on the 13th day of
5 September, 2013, by hand-delivering the foregoing document to the
6 following at the following addresses:

7 James Mills, Esq.
8 Office of the Attorney General
9 1250 Pacific Avenue, Suite 105
10 Tacoma, WA 98402


11 Northwest Steel & Pipe, Inc.
12 4802 S. Proctor St.
13 Tacoma, WA 98409

14 DATED this 16th day of September, 2013.

15 
16 _____
17 Michelle Pizzo, Case and Office Manager
18 LAW OFFICES OF MARK C. WAGNER

19
20
21
22 **LAW OFFICES OF
MARK C. WAGNER**
6512 20th St. Ct. West, Suite A
P. O. Box 65170
Tacoma, WA 98464-1170
Tacoma (253)460-3265
Toll Free 888-279-2002
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